

**POLICE BOARD
CITY OF CHICAGO**

**Case No. 17 PB 2940
BRANDON TERNAND**

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BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

RECEIVED

17 PB 2940

POLICE BOARD
CITY OF CHICAGO

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,
Respondent.

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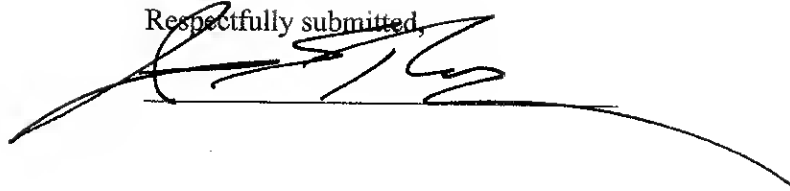
No.: 17 PB 2940

DISCOVERY PRODUCTION REQUEST

NOW COMES the Respondent, BRANDON R. TERNAND, by and through his attorney, James E. Thompson, and respectfully propounds the following discovery request on the City of Chicago:

1. A copy of any and all documents in the City of Chicago Police Department complaint register file in this matter, to include, but not limited to, photographs, videos, audio recordings, notes, reports, and records.
2. A copy of any and all documents in the Independent Police Review Authority/COPA complaint register file in this matter, to include, but not limited to, photographs, videos, audio recordings, notes, reports, and records.
3. A list of the names, addresses, and telephone numbers, of all witnesses that will provide testimony and a summary of the subject matters that they will be testifying about.
4. A copy of any demonstrative exhibits or other exhibits that will be offered or presented at the trial of this matter.
5. A copy of any Illinois Compiled Statute, General Order, Special Order, or Department Rule as alleged in the Charges and Specifications of this matter.
6. A copy of Officer Brandon Ternand's Complimentary and Disciplinary employment history with the City of Chicago.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Thompson', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long, sweeping underline that extends to the right.

Attorney James E. Thompson
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BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

RECEIVED

JAN 24 2018

POLICE BOARD
CITY OF CHICAGO

IN THE MATTER OF CHARGES)
AGAINST)

BRANDON R. TERNAND,)
Respondent,)

No.: 17 PB 2940

RESPONSE TO DISCOVERY PRODUCTION REQUEST

NOW COMES the Chicago Police Superintendent ("Superintendent"), by and through his attorneys, James P. Fieweger and Sara R. Whaley, and respectfully propounds the following response on Respondent.

GENERAL OBJECTIONS

1. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable laws, rules, or regulations.
2. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents or things regarding matters not relevant to the claims or defenses of any party, nor reasonably calculated to lead to the discovery of admissible evidence concerning those claims or defenses. The Superintendent expressly reserves and does not waive any objection to the relevancy and/or admissibility of any document at the Police Board Hearing ("Hearing") by producing it to Officer Ternand in response to his Discovery Production Request.
3. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents not in the custody or control of the Department of Police ("CPD") or the Civilian Office of Police Accountability ("COPA"), or to the extent it seeks documents

which are publicly available. The Superintendent will not undertake a search, or be responsible for producing documents or things in the possession, custody, or control of other persons or entities.

4. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks information that the Superintendent previously provided to Officer Ternand, is already in Officer Ternand's possession, or is readily accessible to Officer Ternand.

5. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent he attempts to impose discovery obligations upon the Superintendent other than what is required by the Police Board's Rules of Procedure, and any other applicable laws, rules, or regulations.

6. The Superintendent will make every effort not to produce documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege recognized by the Police Board's Rules of Procedure, or any other applicable laws, rules, or regulations. To the extent any such privileged or protected information is produced, the production will have been inadvertent and should not be deemed a waiver of any privilege or protection from production.

7. The Superintendent reserves the right to redact from otherwise responsive and non-privileged documents portions thereof that contain information that is (i) not relevant to the claims asserted by the parties or their defenses; (ii) non-responsive; or (iii) privileged or otherwise protected from production.

8. The Superintendent provides the responses below without conceding the relevance or materiality of the subject matter of any document or thing, and without prejudice to the Superintendent's right to object to additional requests for information, or to object to the

admissibility of any additional proof on the subject matter of any document or thing at any time prior to or at the time of the Hearing. In addition, the Superintendent preserves any and all privileges and rights under the Police Board's Rules of Procedures, and any other applicable laws, rules, or regulations, including but not limited to all objections as to relevancy, authenticity, or admissibility of any information.

9. In addition to the General Objections set forth herein, which are incorporated by reference into each and every response, whether specifically referenced therein or not, the Superintendent also states specific additional objections to Officer Ternand's Discovery Production Request. By setting forth such specific objections, the Superintendent does not limit or restrict the General Objections as set forth above.

SPECIFIC OBJECTIONS AND RESPONSE

1. A copy of any and all documents in the City of Chicago Police Department complaint register file in this matter, to include, but not limited to, photographs, videos, audio recordings, notes, reports, and records.

RESPONSE: The Superintendent objects to this Request to the extent that the requested documents contain confidential personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted, would violate the privacy rights of the individuals involved.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP000001-001359.

2. A copy of any and all documents in the Independent Police Review Authority/COPA complaint register file in this matter, to include, but not limited to, photographs, videos, audio recordings, notes, reports, and records.

RESPONSE: The Superintendent objects to this Request to the extent that the requested documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted, would violate the privacy rights of the individuals involved.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP000001-001359.

3. A list of the names, addresses, and telephone numbers, of all witnesses that will provide testimony and a summary of the subject matters that they will be testifying about.

RESPONSE: The Superintendent objects to this Request as premature, as the Superintendent has not yet determined which witnesses he intends to present during the Hearing. The Superintendent further objects to the extent this Request imposes additional requirements regarding the disclosure of witnesses other than other than what is required by the Police Board's Rules of Procedure. The Superintendent will disclose witnesses in accordance with the Police Board's Rules of Procedure governing the pre-hearing conference.

4. A copy of any demonstrative exhibits or other exhibits that will be offered or presented at the trial of this matter.

RESPONSE: The Superintendent objects to this Request as premature, as the Superintendent has not yet determined which exhibits he intends to present during the Hearing. The Superintendent further objects to the extent this Request imposes additional requirements regarding the disclosure of exhibits other than other than what is required by the Police Board's Rules of Procedure. The Superintendent will disclose exhibits in accordance with the Police Board's Rules of Procedure governing the pre-hearing conference.

5. A copy of any Illinois Compiled Statute, General Order, Special Order, or Department Rule as alleged in the Charges and Specifications of this matter.

RESPONSE: The Superintendent objects to this Request as vague to the extent Officer Ternand failed to define the phrase "Charges and Specifications of this matter." The Superintendent further objects to this Request to the extent that the information sought is publicly available and/or in the possession of Officer Ternand.

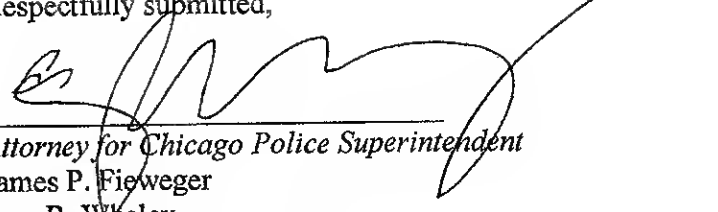
Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP001360-001361.

6. A copy of Officer Brandon Ternand's Complimentary and Disciplinary employment history with the City of Chicago.

RESPONSE: The Superintendent objects to this Request as overbroad in time and scope, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. The Superintendent also objects to this Request because the Police Board tenders the requested materials to all parties.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP001337-001338.

Respectfully submitted,



Attorney for Chicago Police Superintendent

James P. Fieweger

Sara R. Whaley

Michael Best & Friedrich LLP

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RECEIVED

JAN 03 2018

POLICE BOARD
CITY OF CHICAGO

BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent,

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Case No.: 17 PB 2940

SUPPLEMENTAL DISCOVERY PRODUCTION REQUEST

NOW COMES, the Respondent, BRANDON R. TERNAND, by and through his attorney, James E. Thompson, and propounds the following supplemental discovery request on the City of Chicago and Chicago Police Department:

Chicago Police Board Member Independent Review Chicago Police Board Rules Section VI

1. A complete copy of the file requested for review and received by the Chicago Police Board Member regarding the Board members preliminary review of the file pursuant to Chicago Police Board Rules Section VI.
2. Any and all documents, objection, photographs, videos, reports, emails, correspondences, and any other documents or information produced by COPA to the Board member for their review pursuant to Chicago Police Board Rules Section VI.
3. Any and all documents Any and all documents, photographs, videos, reports, emails, correspondences, and any other documents or information produced by the Chicago Police Department to the Board member for their review pursuant to Chicago Police Board Rules Section VI.

Audio/Video

4. A copy of the video referenced in Log#1058279, attachment 29, "205-207 E. Marquette Rd. at 67th Street.
5. A copy of the crime scene footage VHS/DVD referenced in Log#1058279, attachment 40.
6. A copy of all audio Chicago police radio transmissions, 911 calls, 311 calls, dispatch calls/assignments from OEMC, all PDT transmissions, pertaining to the officer involved shooting at or near the 6700 block of South Indiana Avenue, Chicago, IL, on November 8, 2012. (In audio format).
7. A copy of the OEMC dispatch call to P.O. Brandon Ternand, P.O. Victor Razo, Beat 322, P.O. Bruno, P.O. Sledge, or other Chicago Police Officer(s) immediately prior to the officer involved shooting regarding a burglary in progress in approximately the 6700 block of South Indiana Avenue, Chicago, IL, on November 8, 2012. (In audio format).

Training

8. A copy of any and all training manuals, videos, streaming videos, diagrams, photographs, E-learning, computer training, books, bullet point presentations, instructional guides, or any other training used at the Chicago Police Department Training Academy for recruits for the training years of 2006 and 2007 on the following subject matters:
 - a. Use of Force/Deadly Force
 - b. Foot pursuits
 - c. Radio/PDT transmissions
 - d. Reporting the use of force
 - e. Gang activity/Gang violence

- f. Violent Crimes
 - g. Tactical Units
 - h. Use of unmarked vehicles
 - i. Vehicle pursuits
9. A copy of any and all training manuals, videos, streaming videos, diagrams, photographs, E-learning, computer training, books, bullet point presentations, instructional guides, simulation training, or any other training received by P.O. Brandon Ternand from the Chicago Police Department following his completion of the Chicago Police Department Academy training and prior to November 8, 2012, on the following subject matters:
- a. Use of Force/Deadly Force
 - b. Foot pursuits
 - c. Radio/PDT transmissions
 - d. Reporting the use of force
 - e. Gang activity/Gang violence
 - f. Violent Crimes
 - g. Tactical Units
 - h. Use of unmarked vehicles
 - i. Vehicle pursuits

Chicago Police Department's Third District (3rd Dist.)

- 10. A copy of P.O. Brandon Ternand's Arrest History while working in the 3rd District.
- 11. A copy of any and all bulletins, memos, internet disseminated information roll call information or messages issued by the Chicago Police Department to its members regarding

gang activity, gang violence, guns, drug sales and violent crimes occurring in the 3rd District during the year 2012. (See Sup 000227, Lines 30 – 32).

12. Please provide the Chicago Police Department and/or City of Chicago statistical and data information and report(s) for homicides, shootings, weapons violations, robberies, and violent crimes in the 3rd District for the calendar years 2010, 2011, & 2012 and its comparison to other Chicago Police Districts for the same calendar years.

Witnesses

13. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Ms. Cheris Jackson.

14. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Mr. Kenneth Gordon-Gabb.

15. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Ms. Yvonne Jones.

Respectfully,

/S/James E. Thompson
James E. Thompson

Attorney James E. Thompson
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RECEIVED

BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

JAN 24 2010

POLICE BOARD
CITY OF CHICAGO

IN THE MATTER OF CHARGES
AGAINST

No. 17 PB 2940

BRANDON R. TERNAND,

Respondent.

RESPONSE TO SUPPLEMENTAL DISCOVERY REQUEST

NOW COMES the Chicago Police Superintendent, by and through his attorneys, James P. Fieweger and Sara R. Whaley, and respectfully propounds the following response on the Respondent.

GENERAL OBJECTIONS

1. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable laws, rules, or regulations.
2. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents or things regarding matters not relevant to the claims or defenses of any party, nor reasonably calculated to lead to the discovery of admissible evidence concerning those claims or defenses. The Superintendent expressly reserves and does not waive any objection to the relevancy and/or admissibility of any document at the Police Board Hearing ("Hearing") by producing it to Officer Ternand in response to his Discovery Production Request.
3. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks documents not in the custody or control of the Department of Police ("CPD") or the Civilian Office of Police Accountability ("COPA"), or to the extent he seeks documents

which are publicly available. The Superintendent will not undertake a search, or be responsible for producing documents or things in the possession, custody, or control of other persons or entities.

4. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent it seeks information that the Superintendent previously provided to Officer Ternand, is already in Officer Ternand's possession, or is readily accessible to Officer Ternand.

5. The Superintendent objects to Officer Ternand's Discovery Production Request to the extent he attempts to impose discovery obligations upon the Superintendent other than what is required by the Police Board's Rules of Procedure, and any other applicable laws, rules, or regulations.

6. The Superintendent will make every effort not to produce documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege recognized by the Police Board's Rules of Procedure, or any other applicable laws, rules, or regulations. To the extent any such privileged or protected information is produced, the production will have been inadvertent and should not be deemed a waiver of any privilege or protection from production.

7. The Superintendent reserves the right to redact from otherwise responsive and non-privileged documents portions thereof that contain information that is (i) not relevant to the claims asserted by the parties or their defenses; (ii) non-responsive; or (iii) privileged or otherwise protected from production.

8. The Superintendent provides the responses below without conceding the relevance or materiality of the subject matter of any document or thing, and without prejudice to the Superintendent's right to object to additional requests for information, or to object to the

admissibility of any additional proof on the subject matter of any document or thing at any time prior to or at the time of the Hearing. In addition, the Superintendent preserves any and all privileges and rights under the Police Board's Rules of Procedures, and any other applicable laws, rules, or regulations, including but not limited to all objections as to relevancy, authenticity, or admissibility of any information.

9. In addition to the General Objections set forth herein, which are incorporated by reference into each and every response, whether specifically referenced therein or not, the Superintendent also states specific additional objections to Officer Ternand's Discovery Production Request. By setting forth such specific objections, the Superintendent does not limit or restrict the General Objections as set forth above.

SPECIFIC OBJECTIONS AND RESPONSE

1. A complete copy of the file requested for review and received by the Chicago Police Board Member regarding the Board members preliminary review of the file pursuant to Chicago Police Board Rules Section VI.

RESPONSE: The Superintendent objects to this Request to the extent that the requested documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP000001-000046 and SUP001362-001544.

2. Any and all documents, objection [sic], photographs, videos, reports, emails, correspondences, and any other documents or information produced by COPA to the Board member for their review pursuant to Chicago Police Board Rules Section VI.

RESPONSE: The Superintendent objects to this Request to the extent that the requested documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved. The Superintendent also objects to this Request as duplicative, to the extent that the Superintendent has already provided Officer Ternand with the requested documents in response to another request.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP000001-000046 and SUP001362-001544.

3. Any and all documents Any and all documents [sic], photographs, videos, reports, emails, correspondences, and any other documents of information produced by the Chicago Police Department to the Board member for their review pursuant to Chicago Police Board Rules Section VI.

RESPONSE: The Superintendent objects to this Request to the extent that the requested documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved. The Superintendent also objects to this Request as duplicative, to the extent that the Superintendent has already provided Officer Ternand with the requested documents in response to another request.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP001362-001419.

4. A copy of the video referenced in Log #1058279, attachment 29, "205-207 E. Marquette Rd. at 67th Street.

RESPONSE: Notwithstanding and without intending to waive any objections, responsive materials are enclosed at bates number SUP001345.

5. A copy of the crime scene footage VHS/DVD referenced in Log #1058279, attachment 40.

RESPONSE: Notwithstanding and without intending to waive any objections, responsive materials are enclosed at bates number SUP001346.

6. A copy of all audio Chicago police radio transmissions, 911 calls, dispatch calls/assignments from OEMC, all PDT transmissions, pertaining to the officer involved shooting at or near the 6700 block of South Indiana Avenue, Chicago, IL, on November 8, 2012. (In audio format).

RESPONSE: The Superintendent objects to this Request as overly broad in scope, as Officer Ternand has failed to state a particularized need for all of the requested audio. The Superintendent further objects to this Request to the extent it seeks to impose additional obligations other than what is set forth by the Police Board's Rules of Procedure.

Notwithstanding and without intending to waive any objections, responsive audio materials and event queries are enclosed at bates numbers SUP000085-000087 and SUP001347.

7. A copy of the OEMC dispatch call to P.O. Brandon Ternand, P.O. Victor Razo, Beat 322, P.O. Bruno, P.O. Sledge, or other Chicago Police Officer(s) immediately prior to the officer involved shooting regarding a burglary in progress in approximately the 6700 block of South Indiana Avenue, Chicago, IL, on November 8, 2012. (In audio format).

RESPONSE: The Superintendent objects to this Request as overly broad in scope, as Officer Ternand has failed to state a particularized need for all of the requested audio. The

Superintendent further objects to this Request to the extent it seeks to impose additional obligations other than what is set forth by the Police Board's Rules of Procedure.

Notwithstanding and without intending to waive any objections, the Superintendent states that he does not have any of the requested materials in audio format, but responsive event queries are enclosed at bates numbers SUP000734-000737.

8. A copy of any and all training manuals, videos, streaming videos, diagrams, photographs, E-learning, computer training, books, bullet point presentations, instructional guides, or any other training used at the Chicago Police Department Training Academy for recruits for the training years of 2006 and 2007 on the following subject matters:

- a. Use of Force/Deadly Force
- b. Foot pursuits
- c. Radio/PDT transmissions
- d. Reporting the use of force
- e. Gang activity/Gang violence
- f. Violent Crimes
- g. Tactical Units
- h. Use of unmarked vehicles
- i. Vehicle pursuits

RESPONSE: The Superintendent objects to this Request as overbroad, unduly burdensome, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. Specifically, the Request seeks documents for events that occurred outside of the time period relevant to the Hearing. The Request also seeks documents

for individuals and training topics that have no connection or bearing on the outcome of the Hearing.

9. A copy of any and all training manuals, videos, streaming videos, diagrams, photographs, E-learning, computer training, books, bullet point presentations, instructional guides, simulation training, or any other training received by P.O. Brandon Ternand from the Chicago Police Department following his completion of the Chicago Police Department Academy training and prior to November 8, 2012, on the following subject matters:

- a. Use of Force/Deadly Force
- b. Foot pursuits
- c. Radio/PDT transmissions
- d. Reporting the use of force
- e. Gang activity/Gang violence
- f. Violent Crimes
- g. Tactical Unites
- h. Use of unmarked vehicles
- i. Vehicle pursuits

RESPONSE: The Superintendent objects to this Request as overbroad, unduly burdensome, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. Specifically, the Request seeks documents for events that occurred outside of the time period relevant to the Hearing and for training topics that have no connection or bearing on the outcome of the Hearing.

10. A copy of P.O. Brandon Ternand's Arrest History while working in the 3rd District.

RESPONSE: The Superintendent objects to this Request as vague, overbroad, unduly burdensome, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. Specifically, the Request seeks documents beyond the scope and timeframe relevant to the Hearing.

11. A copy of any and all bulletins, memos, internet disseminated information roll call information or messages issued by the Chicago Police Department to its members regarding gang activity, gang violence, guns, drug sales, and violent crimes occurring in the 3rd District during the year 2012. (See Sup 000227, Lines 30-32).

RESPONSE: The Superintendent objects to this Request as overbroad, unduly burdensome, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. Specifically, the Request seeks documents beyond the scope and timeframe relevant to the Hearing.

12. Please provide the Chicago Police Department and/or City of Chicago statistical and data information and report(s) for homicides, shootings, weapons violations, robberies, and violent crimes, in the 3rd District for the calendar years 2010, 2011, & 2012 and its comparison to other Chicago Police Districts for the same calendar years.

RESPONSE: The Superintendent objects to this Request as overbroad, unduly burdensome, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. Specifically, the Request seeks documents beyond the scope and timeframe relevant to the Hearing.

13. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Ms. Cheris Jackson.

RESPONSE: The Superintendent objects to this Request as overbroad, and duplicative, to the extent that the Superintendent has already provided Officer Ternand with the requested documents in response to another request. The Superintendent also objects to this Request to the extent that the documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved. The Superintendent further objects to this Request as premature, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. The Superintendent still has not determined whether he intends to call Ms. Jackson as a witness.

Notwithstanding and without intending to waive any objections, responsive documents are enclosed at bates numbers SUP001072-001073 and SUP001270.

14. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Mr. Kenneth Gordon-Gabb.

RESPONSE: The Superintendent objects to this Request as overbroad, and duplicative, to the extent that the Superintendent has already provided Officer Ternand with the requested documents in response to another request. The Superintendent also objects to this Request to the extent that the documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved. The Superintendent further objects to this Request as premature, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. The Superintendent still has not determined whether he intends to call Mr. Gordon-Gabb as a witness. If the Superintendent determines after further

investigation that Mr. Gordon-Gabb will serve as a witness during the Hearing, the Superintendent will tender Mr. Gordon-Gabb's criminal history report by the pre-hearing conference.

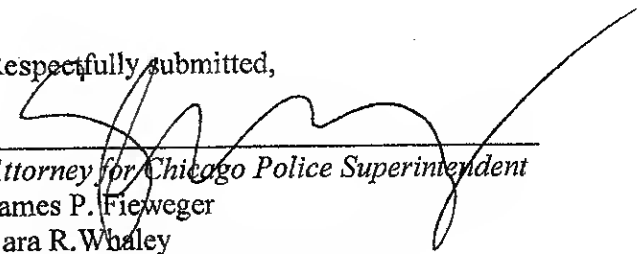
Notwithstanding and without intending to waive any objections, responsive information is enclosed at bates number SUP000530.

15. Please provide the last known address, telephone or cell phone number, date of birth, social security number, arrest report(s) and criminal history report for witness Ms. Yvonne Jones.

RESPONSE: The Superintendent objects to this Request as overbroad, and duplicative, to the extent that the Superintendent has already provided Officer Ternand with the requested documents in response to another request. The Superintendent also objects to this Request to the extent that the documents contain personal, private, and/or sensitive information of individuals who are not a party to the Hearing, which, if produced unredacted would violate the privacy rights of the individuals involved. The Superintendent further objects to this Request as premature, and to the extent it seeks documents not relevant to the Hearing or likely to lead to the discovery of admissible evidence. The Superintendent still has not determined whether he intends to call Ms. Jones as a witness. If the Superintendent determines after further investigation that Ms. Jones will serve as a witness during the Hearing, the Superintendent will tender Ms. Jones' criminal history report by the pre-hearing conference.

Notwithstanding and without intending to waive any objections, responsive information is enclosed at bates number SUP000570.

Respectfully submitted,



Attorney for Chicago Police Superintendent

James P. Fieweger

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BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

RECEIVED

1/28/01

POLICE BOARD
CITY OF CHICAGO

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent,

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No.: 17 PB 2940

WITNESS LIST

1. Brandon Ternand
2. Cheris Jackson
3. Valerie Howard, Police Communications Operator (Record Custodian for 911 call and transcript)
4. Michael Gennaco

Respectfully submitted,



Attorney for Chicago Police Superintendent
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srwhaley@michaelbest.com

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BEFORE THE POLICE BOARD
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12/30/11

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent,

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POLICE BOARD
CITY OF CHICAGO

No.: 17 PB 2940

EXHIBIT LIST

1. Google Image of the Area
2. Map of Pursuit (Diagram of backyard)
3. Photos of the crime scene (Atts. 37-39)
4. Postmortem report (Att 55)
5. Laboratory Report re: Officer Ternand's Gun (Att. 81)
6. Radio Dispatches (Att. 9)
7. 911 Call Transcript and Tape (Att. 10)
8. Expert Report
9. General Order 02-08-03
10. Sec. 2-8 of Il. Compiled Statutes (Forcible Felony)
11. Any exhibits included on Respondent's Exhibit List

Respectfully submitted,



Attorney for Chicago Police Superintendent
James P. Fieweger
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BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

RECEIVED

APR 30 1990

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent,

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Case No.: 17 PB 2940

POLICE BOARD
CITY OF CHICAGO

RESPONDENT, BRANDON TERNAND'S WITNESS LIST

NOW COMES, the Respondent, BRANDON R. TERNAND, by and through his attorney, James E. Thompson, and submits the following witness list for the hearing in this matter:

1. Chicago Police Officer Brandon Ternand Star No.: 2717

He will testify regarding his training and experience, arrest history, complimentary history, knowledge and statistics regarding violent crime history in the 3rd District, facts and circumstances regarding his knowledge of officer involved shootings, and the facts and circumstances regarding the present officer involved shooting. Character witness.

- Available -

2. Chicago Police Officer Victor Razo Star No. 3424

He will testify regarding his training and experience, arrest history, knowledge and statistics regarding violent crime history in the 3rd District, facts and circumstances regarding his knowledge of officer involved shootings, and the facts and circumstances regarding the present officer involved shooting. Character witness.

- Available -

3. Chicago Police Officer Anthony Bruno Star No.: 12212

He will testify regarding his training and experience, arrest history, knowledge and statistics regarding violent crime history in the 3rd District, facts and circumstances regarding his knowledge of officer involved shootings, and the facts and circumstances regarding the present officer involved shooting. Character witness.

- Available -

4. Chicago Police Officer Eugene Sledge Star No.: 7704

He will testify regarding his training and experience, arrest history, knowledge and statistics regarding violent crime history in the 3rd District, facts and circumstances regarding his knowledge of officer involved shootings, and the facts and circumstances regarding the present officer involved shooting. Character Witness.

- May Call -

5. Chicago Police Officer Salvador Lara Star No.: 17286

He will testify regarding his training and experience, arrest history, knowledge and statistics regarding violent crime history in the 3rd District, facts and circumstances regarding his knowledge of officer involved shootings, and the facts and circumstances regarding the present officer involved shooting. Character witness.

- Available -

6. Detective Matthew Benigno Star No.: 20807

He will testify regarding the facts, circumstances, reports, documents, photos, and other materials generated and received during the course of his investigation of Officer Brandon Ternand's officer involved fatal shooting of Dakota Bright.

- Available May 17, 2018 -

7. Chicago Police Officer Andrew L. Cantore Star No.: 5022

He will testify as an expert on the Use of Force as it relates to the use of deadly force in this matter.

- Available May 17, 2018 --

Character Witnesses:

8. Chicago Police Officer Victor Raza - Available
9. Chicago Police Officer Anthony Bruno - Available May 17, 2018
10. Chicago Police Officer Shalaine Enahora – Available May 17, 2018
11. Renisha Ternand – Available
12. Jason Deptner – Available afternoon May 11, 2018
13. Commander Kevin Johnson Chicago Police Department 11th District – Available

Respectfully submitted,
/S/James E. Thompson

James E. Thompson
Gottreich Grace & Thompson
311 W. Superior Street, Suite 215
Chicago, IL 60654
(312)943-0600
(312)943-7133 fax
JThompson@GGTlegal.com

**BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO**

RECEIVED

APR 30 2014

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent,

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Case No.: 17 PB 2940

POLICE BOARD
CITY OF CHICAGO

RESPONDENT, BRANDON TERNAND'S EXHIBIT LIST

NOW COMES, the Respondent, BRANDON R. TERNAND, by and through his attorney, James E. Thompson, and submits the following exhibit list for the hearing in this matter:

- Group Exhibit 1: Chicago Police Officer Brandon Ternand's Arrest History,
(pg. 1-150) June 2007 to October 13, 2016 (*inclusive*)
- Group Exhibit 2: Chicago Police Officer Brandon Ternand's Complimentary and
Disciplinary History (SUP 001337-38)
- Group Exhibit 3: OEMC Transcript of 911 Call -- Shots Fired
(pg. 1-18) Dated November 8, 2012 at 1543 Hours (SUP 001525-43)
- Exhibit 4: OEMC Audio Recording of 911 Call -- Shots Fired
Dated November 8, 2012 at 1543 Hours
- Group Exhibit 5: Still Photographs of Dakota Bright from Residential Security
Camera taken November 8, 2012
- Exhibit 6: Photograph of Dakota Bright -- "D.O.D. SOLDIER, R.I.P. TWIN"
(SUP 001125)
- Exhibit 7: Photograph of Dakota Bright -- "068 D.O.D. TWIN TOWN 069 R.I.P.
TWIN" (SUP 001130)
- Exhibit 8: Photograph of Dakota Bright and 7 other Males with Pistol, Gang Signs
(SUP 001127)
- Exhibit 9: Photograph of Chicago Police Department marked Squad Car
"R.I.P. TWIN C.P.D.K" (SUP 001129)

- Exhibit 10: Photograph of Dakota Bright and Unknown Male with Guns and Silencer (SUP 001128)
- Exhibit 11: Photograph of Dakota Bright and Unknown Mail with Guns and Silencer "D.o.d R.I.p Dekotta/twin 068 069" (SUP 001126)
- Exhibit 12A: Photograph of Dakota Bright's Saur Western .22 Caliber Revolver – Evidence Marker A
- Exhibit 12B: Photograph of Dakota Bright's Saur Western .22 Caliber Revolver – Close View
- Exhibit 13: Photograph of Dakota Bright's Black Samsung Cellular Phone – Evidence Marker B - Close-up View
- Exhibit 14: Photograph of Dakota Bright's Black Samsung Cellular Phone – Evidence Marker B - View of Placement of Phone at 6723 S. Indiana Avenue Backyard Fence
- Exhibit 15: Photograph of Dakota Bright's Black Samsung Cellular Phone – Evidence Marker B - Inventoried by Chicago Police Department
- Exhibit 16: Photograph of Dakota Bright's Black Samsung Cellular Phone – Evidence Marker B - Face of Telephone Inventoried by Chicago Police Department
- Exhibit 17: Photograph of Dakota Bright's Black Samsung Cellular Phone -- Evidence Marker B – 6723 S. Indiana Avenue Backyard Fence
- Exhibit 17B: Photograph of Corner of Indiana Ave. and Alley - Where Gun Recovered – West/Southwest Viewpoint
- Exhibit 17C: Photograph of Black Cellular Phone - Evidence Marker B in 6723 S. Indiana Ave., Chicago, Illinois backyard
- Exhibit 17D: Photograph of Corner of Indiana Ave., and Alley
- Exhibit 18: Photograph of Corner of Indiana Ave., area Dakota Bright's Saur Western .22 Caliber Revolver recovered
- Exhibit 19: Photograph Corner of Indiana Ave., area Dakota Bright's Saur Western .22 Caliber Revolver recovered – Evidence Marker A
- Exhibit 20: Photograph of Corner of Indiana Ave., area and Dakota Bright's Saur Western .22 Caliber Revolver-- Evidence Marker A

- Exhibit 21A: Property Inventory Report No. 12759250 – Swab Box of Black Samsung Cellular Phone recovered from Dakota Bright at 6723 S. Indiana Ave., Chicago, Illinois (SUP 000255)
- Exhibit 21B: Property Inventory Report No. 12759250 – Black Samsung Cell Phone recovered from Dakota Bright at 6723 S. Indiana Ave., Chicago, Illinois (SUP 001022)
- Group Exhibit 22A: IPRA Beat 322, Shots Fired: 0600-1900 HRS, January 1, 2012 to November 8, 2012 (SUP 001413)
- 22B: IPRA Beat 322, Homicide: 0600-1900 HRS, January 1, 2012 to November 8, 2012 (SUP 001412)
- 22C: IPRA Beat 322, Shootings: 0600-1900 HRS, January 1, 2012 to November 8, 2012 (SUP 001411)
- 22D: IPRA Detailed Report of Shots Fired in Beat 322, January 8, 2012 to November 5, 2012 (SUP 001415-16)
- Group Exhibit 23: Chicago Police Department Event Query Event No. 1231309796
(A-F) (SUP 000080-85)
- Exhibit 24: Chicago Police Department Event Query Event No. 1231309955
Phone Call from Cherish Jackson (SUP 000086)
- Exhibit 25: Chicago Police Department Event Query Event No. 1231310046
(SUP 000087)
- Exhibit 26: Blood Alcohol Concentration results and Urinalysis Results for Officer Brandon Ternand (SUP 000442-49)
- Exhibit 27: Chicago Police Department 3rd District Shooting Statistics from 2010 to 2012.
- Group Exhibit 28: Photographs of Dakota Bright in backyard of 6727 S. Indiana Ave.,
(A-C) Chicago, Illinois
- Exhibit 29: Photograph View of the Alley
- Exhibit 30: Photograph – South View of vacant lot
- Exhibit 31: Photograph – South View from Vacant Lot Across Alley
- Exhibit 32: Photograph – South View from Alley into Backyard of 6719 S. Indiana Ave., Chicago, Illinois
- Exhibit 33: Photograph - North View from backyard of 6725 S. Indiana Ave., Chicago, Illinois

- Exhibit 34: Photograph - North View of 6ft fence and grill in 6721 S. Indiana Ave., Chicago, Illinois
- Exhibit 35: Photograph - North View of 6ft fence and grill in 6721 S. Indiana Ave., Chicago, Illinois - Close view
- Exhibit 36: Photograph - North View of 6ft fence and grill in 6721 S. Indiana Av., Chicago, Illinois
- Exhibit 37: Photograph - South View from Back Yard of 6721 S. Indiana Ave., Chicago, Illinois of 4ft Fence into Backyard of 6721 S. Indiana Ave., Chicago, Illinois
- Exhibit 38: Criminal History Report of Cheris L. Jackson from Chicago Police Department (SUP 001072-73)
- Exhibit 39: Interview of Cheris L. Jackson on November 9, 2012 by Chicago Police Department (SUP 001110-11)
- Exhibit 40: Inventory No. 12759265 - firearm, expended shell and remaining live cartridges (SUP 000261)
- Exhibit 41: Inventory No. 12759254 - Biological swab box recovered from firearm (SUP 000257)
- Exhibit 42: Crime Scene Processing Report - Chicago Police Department (SUP 000688-92)
- Group Exhibit 43: Preliminary Firearm Examination and Illinois State Police Laboratory (A-K) Reports (SUP 000644-47; 652-56; 575-77)
- Group Exhibit 44: Case Supplementary Report for Case No. HV553452 - Chicago Police (pgs. 1-31) Department
- Exhibit 45: Juvenile Warrant and Order for Dakota Bright issued November 5, 2012 - Circuit Court of Cook County, Juvenile Justice Division (SUP 000918)
- Exhibit 46: Statement of Alfred "Law" Withers taken November 10, 2012 - Chicago Police Department (SUP 000937-38)
- Exhibit 47: Gang Conflict/Gang Faction Map - Chicago Police Department, Crime Prevention and Information Center (SUP 001066-67)
- Exhibit 48: Video Recording of Dakota Bright from Residential Security Camera taken November 8, 2012

Exhibit 49:

Crime Scene Video - November 8, 2012

Respectfully Submitted,

/s/ James E. Thompson

James E. Thompson

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BEFORE THE POLICE BOARD
OF
THE CITY OF CHICAGO

RECEIVED

MAY 03 2018

POLICE BOARD
CITY OF CHICAGO

IN THE MATTER OF CHARGES
AGAINST

BRANDON R. TERNAND,

Respondent.

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No.: 17 PB 2940

**SUPERINTENDENT OF THE POLICE BOARD'S
MOTION IN LIMINE TO ADMIT CHERIS JACKSON'S 911 CALL**

The Police Board should admit Cheris Jackson's 911 call without her presence in court because the 911 call constitutes an excited utterance and is an admissible exception to the rule against hearsay pursuant to Illinois Rule of Evidence 803(2) regardless of whether the witness is available to testify.

Jackson's 911 call contains a brief description of the events she witnessed. She stated that "some boy was just runnin' from the police officers. And while he was jumpin' the gate one of the officers shot 'em in the back." After this brief description of the emergency situation, Jackson provided a location for an ambulance to be sent.

Though Respondent argues that the 911 call is inadmissible unless Jackson is available for cross-examination, there is no requirement that Jackson be available for the hearing because the 911 call is properly characterized as an excited utterance. *See* Ill. R. Evid: 803(2). A statement is admissible as an excited utterance where there is (1) an occurrence "sufficiently startling to produce a spontaneous and unreflecting statement"; (2) no time for the declarant to fabricate the statement; and (3) the statement relates to the occurrence. *People v. Lisle*, 376 Ill. App. 3d 67, 77 (3d Dist. 2007); *see also People v. Abram*, 2016 IL App (1st) 132785, ¶ 71 ("A statement is admissible as an excited utterance where it 'relates to a startling event or condition' and is 'made while the declarant was under the stress of excitement caused by the event or

condition.”); Ill. R. Evid. 803(2). Jackson’s 911 call is a textbook example of an excited utterance because she called 911 immediately after witnessing a someone get shot in the back to report the shooting as an emergency.

Specifically, there can be no genuine disagreement that the events forming the subject of Jackson’s 911 call, namely witnessing someone get shot in the back, were startling. *See, e.g., People v. Sullivan*, 366 Ill. App. 3d 770, 780 (1st Dist. 2006) (witnessing a shooting was sufficiently startling to justify application of the excited utterance exception). Further, the call was made immediately after Jackson witnessed the shooting, and Jackson’s continuous use of the word “just” as a temporal description of the events emphasizes that little time elapsed between the shooting and the 911 call. *See Lisle*, 376 Ill. App. 3d at 77 (“The fact that a declarant’s statement is made at the first opportunity to speak supports a finding of spontaneity . . .”). Indeed, there is no evidence in this case that Jackson had any affiliation with or affinity for the victim, rendering it illogical to believe she would have taken the time to fabricate the events before reporting them, even if she had occasion to. *Cf. Abram*, 2016 IL App (1st) 132785, ¶ 73 (“The exception *presumes* the existence of a motive to fabricate in many declarants.”). Finally, the statement indisputably relates to the startling event, because the statement was made to report the shooting to the appropriate authorities. Accordingly, Jackson’s statements in her 911 call are excited utterances and are therefore admissible as exceptions to the rule against hearsay.

For these reasons the Police Board should admit Cheris Jackson's 911 call notwithstanding her absence from court for purposes of cross-examination.

Dated: May 3, 2018



*Attorney for Eddie Johnson, Superintendent,
Chicago Police Department*
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Respondent,

The statements contained in Cheris Jackson's 911 call are a testimonial recollection of events and not an excited utterance. Cheris provided three (3) separate recorded statements revealing her 911 call was not made under any stress or excitement but rather to provide information to authorities. Further, Cheris Jackson's self-admitted falsehoods under oath combined with her varying and implausible account of events raise extraordinary reliability and credibility concerns placing her 911 call well outside the purpose of the excited utterance exception to hearsay. The admission of Cheris Jackson's 911 call without her presence at the hearing would be highly prejudicial and would serve little to no probative value. Importantly, admitting Cheris Jackson's 911 call without the required foundation is a violation of Brandon Telnand's constitutional rights secured in the Confrontation Clause of the United States Constitution. Accordingly, the Superintendent's Motion in Limine seeking to introduce Cheris Jackson's 911 call should be denied.

Reliability concerns are at the very heart of both the general exclusion of hearsay statements and the exceptions and exclusions that may provide admissibility. *People v. McCoy*, 2016 IL App (1st) 130988, ¶ 80, 63 N.E.3d 1006, 1025 citing *People v. Caffey*, 205 Ill.2d 52, 88, 275 Ill. Dec. 390, 792 N.E.2d 1163 (2001). The theory behind the excited utterance exception codified in Fed. R. Evid. 803(2) is, "simply that circumstances may produce a condition of excitement which temporarily stills the capacity of reflection and produces utterances free of conscious fabrication." Fed. R. Evid. 803, Advisory Committee Notes, Note to Paragraphs (1) and (2) (WESTLAW 2018); *See also, United States v. Boyce*, 742 F.3d 792, 796 (7th Cir. 2014).

Caution regarding the admissibility of spontaneous declarations can be found throughout jurisprudence. In *Boyce*, the majority noted,

"The entire basis for the exception may ... be questioned. While psychologists would probably concede that excitement minimizes

the reflective self-interest influencing the declarant's statements, they have questioned whether this might be outweighed by the distorting effect of shock and excitement upon the declarant's observation and judgment." *United States v. Boyce*, 742 F.3d 792, 796 (7th Cir. 2014) *quoting* 2 McCormick on Evidence § 272 (7th ed.2013).

Judge Posner's concurring opinion further urges, "It is time the law awakened from its dogmatic slumber." *Boyce*, 742 F.3d 792, 801 (7th Cir. 2014).

Hearsay admissible as a spontaneous declaration has been characterized by Illinois courts as, "an event speaking through the declarant and not the declarant speaking about the event." *People v. Lisle*, 376 Ill. App. 3d 67, 315 Ill. Dec. 632, 641, 877 N.E.2d 119, 128 (3d Dist. 2007), *appeal denied*, 226 Ill. 2d 598, 316 Ill. Dec. 547, 879 N.E.2d 935 (2007). In this case, the matter to which the 911 call relates was over for two (2) minutes and the scene secured by on-scene Chicago Police Officers before Cheris Jackson allegedly dialed 911. Cheris Jackson's voice on the recording is calm and indifferent, further evidencing that she was under no stress or excitement at the time of her call. Cheris Jackson reflected on what she believed she saw and heard and then provided narrative information to the OEMC operator. SUP 000080, SUP 000086. The information Cheris Jackson provided to the OEMC operator is wrong and unreliable on its face. Cheris Jackson clearly says she saw "officers" fire "shots" at Dakota Bright which is contrary to the indisputable objective evidence of this case.

In order to admit such otherwise rank hearsay in Ms. Jackson's 911 call under Fed. R. Evid. 803(2), the statement must be in response to: an occurrence sufficiently startling to produce a spontaneous and un-reflected statement, an absence of time to fabricate and the statements must relate to the circumstances of the occurrence. *O'Brien v. Walker*, 49 Ill. App. 3d 940, 364 N.E.2d 533, 7 Ill. Dec. 372 (1st Dist. 1977). The declarant must also have had an opportunity to personally observe the matter of which he or she speaks. *People v. Garner*, 2016 IL App (1st)

141583, ¶¶ 50–51, 407 Ill. Dec. 731, 64 N.E.3d 109 (App. Ct. 1st Dist. 2016) *quoting People v. Hill*, 60 Ill. App. 2d 239, 248, 208 N.E.2d 662 (1965).

In this case, Cheris Jackson's 911 call is a deliberate, calm and calculated recitation to authorities of some events she witnessed compounded with fabricated speculations. The objective evidence and her own testimony establishes Cheris Jackson does not witness all that she describes in the 911 call. In summary, Cheris tells the Emergency Operator she saw a boy running from police officers and while the boy was hopping a gate, the officers "just stopped and fired shots" and that one of the officer's shot the boy in the back, or at least she "thinks so". SUP 001527. However, not more than one officer fired and that not more than one shot was fired. An, "un-spontaneous narrative or recital of a past event...", does not fall into the excited utterance exception to hearsay. *Swearingen v. Klinger*, 91 Ill.App.2d 251, 234 N.E.2d 60 (3d Dist. 1968). The officers entire encounter with Dakota Bright lasted approximately 25 seconds. SUP 000080. However, it took Cheris Jackson two (2) minutes to call 911 after shots were reported to be fired to provide her recitation constituting an un-spontaneous narrative of a past event outside the scope of the Rule 803(2) exception.

The accuracy of Cheris Jackson's statement also casts serious reliability concerns and does not support the application of the hearsay exception. In *McCoy* the appellate court found a victim's statements to fall outside the exception under Rule 803(2) due to the inaccuracy of his statements although he had been shot and involved in a car crash. Although being shot and in a car accident were objectively sufficiently startling events, the court found the inaccuracies suggest the events were (1) not sufficiently startling to the declarant to produce an un-reflected statement, and (2) there must have been time for fabrication because his statements were false. *People v. McCoy*, 2016 IL App (1st) 130988, ¶ 95, 63 N.E.3d 1006, 1028.

Similarly here, the fact Cheris Jackson's initial 911 call is factually inaccurate and that she has contradicted herself numerous times evidence the lack of what may have otherwise been an objectively startling event. The location of Dakota Bright's fallen body in the middle of the backyard evidences he was not shot in the process of hopping a fence as she narrated to the OEMC operator. Further, it is indisputable only one shot was fired and not multiple shots as Ms. Jackson claimed. Dakota Bright was not shot in the back as Ms. Jackson states on the recording. Further still, in each of her subsequent three (3) recorded statements Cheris Jackson denies ever seeing anyone with a gun or witnessing anyone fire shots. *See Nov. 9, 2012 IPRA Statement of Cheris Jackson* SUP 000148, Ln. 28-30; SUP 000153, Ln. 25-28; SUP 000157, Ln. 13-16; *Jun. 30, 2015 IPRA Statement of Cheris Jackson* SUP 000711, Ln. 25-26; *Aug. 22, 2016 IPRA Statement of Cheris Jackson* SUP 001285, Ln. 14-31.

As the court held in *Garner*, the declarant must have personally observed the matter upon which she speaks. Although Cheris may have seen a portion of the chase she did not see the circumstances at the very heart of this case, which is the shooting of Dakota Bright and his actions immediately prior to Officer Ternand's discharge. The following are examples of Cheris Jackson's untruthful and misleading statements:

1. Cheris was watching the "woman who called 911" from her phone (*See Nov. 9, 2012 Stmt.*, SUP 000149, Ln. 30-32; SUP000150, Ln. 1-13; SUP 000156, Ln. 27-31; *Jun. 2015 Stmt.*, SUP 000715, Ln. 3-8, *Aug. 2016 Stmt.*, SUP 001271, Ln. 24-32, SUP 001272, Ln. 1-7);
2. Cheris was too far away and never looked (*See Nov. 9, 2012 Stmt.* SUP 000156, Ln. 18-23);
3. Cheris was in her car with the music on and did not actually get out until after she heard gunshots (*See Aug. 2016 Stmt.* SUP 001273, Ln. 1-11; SUP 001289, Ln. 4-23); or
4. Cheris was distracted because she was actually on the phone at the time the events transpired (*See Aug. 2016 Stmt.*, SUP 001293, Ln. 11-14).

Further still, Cheris Jackson has not and could not claim to have made the 911 call under the stress or excitement of gunshots because she initially claimed she thought was noise coming from nearby construction sites. *See* Nov. 9, 2012 Stmt. SUP 000149, Ln. 1-9. In fact, Cheris Jackson told Investigators the day after the incident the possibility of a gunshot, "...didn't even come to my mind." SUP 000153, Ln. 12-19. Additionally, Cheris Jackson told investigators she didn't do anything after hearing the gun-shot because she's used to it being from the area and to her, "it was like scenery". *See* Aug. 2016 Stmt. SUP 001291, Ln. 1-23; SUP 001292, Ln. 20-21. Cheris Jackson's 911 call was not a spontaneous reaction to an event that startled her but rather the product of her own reflective thoughts and therefore inadmissible hearsay. *Boyce*, 742 F.3d 792, 796 (7th Cir. 2014) *citing* 2 McCormick on Evidence § 272 (7th ed.2013).

Courts and tribunals are required to consider the totality of the circumstances of a particular case in determining whether to apply the excited utterance exception. *Morelli v. Ward*, 315 Ill. App. 3d 492, 497, 734 N.E.2d 87, 91 (3d Dist. 2000). Each case must be judged on its own set of facts. *Thomas v. Goodman*, 52, Ill. App. 3d 774, 365 N. E. 2d 1314, 9 Ill. Dec. 852 (5th Dist. 1977).

"The court must determine whether under all the surrounding circumstances it is reasonable to believe that the declarant acted without thought, or whether there existed the possibility that the declarant has deliberated and made a false statement. If the court is convinced that the declaration springs from the event and not from calculation, the statement is admissible under the *res gestae* exception." *People v. Stiff*, 391 Ill. App. 3d 494, 503, 904 N.E.2d 1174, 1182 (5th Dist. 2009) *quoting* *People v. Parisie*, 5 Ill.App.3d 1009, 1029, 287 N.E.2d 310 (1972).

To deny the Superintendent's Motion in Limine the Board need only find there existed a possibility Ms. Jackson deliberated in the time between the events she actually saw and her 911 call resulting in a false statement. The circumstances surrounding Cheris Jackson's 911 call, the

objective evidence in this case and Ms. Jackson's subsequent testimony firmly support a finding of conscious deliberation.

The cases cited by the Superintendent are clearly distinguishable from the 911 call in this case. In *Lisle* and *Abram*, cited by the Superintendent, the 911 calls were admitted because the declarants were calling 911 relaying information about crimes in-progress at the time of their respective calls. See *People v. Lisle*, 376 Ill. App. 3d 67, 80, 877 N.E.2d 119, 131 (3d Dist. 2007) (Statement of victim made while being shot at sufficiently startling) and *People v. Abram*, 2016 IL App (1st) 132785, ¶ 67, 50 N.E.3d 1197, 1215 (Police audio recording of Officer's observational statements while in pursuit of fleeing suspect ejecting narcotics).

The 911 call cannot be admitted without proper authentication and foundation laid through the Superintendent's purported declarant Cheris Jackson since she repeatedly denied she made the call. The case of *Redmon v. Austin* is instructive here, wherein the court refused to admit a declaration from an unidentified witness although the event was sufficiently startling and the statement relatable thereto. *Redmon v. Austin*, 188 Ill. App. 3d 220, 225, 543 N.E.2d 1351, 1354 (5th Dist. 1989). Without knowing the declarant's identity, the court found it could not be sure the declarant actually witnessed the events themselves. *Id.* In this case, the 911 caller believed to be Cheris Jackson never identifies herself to the operator, hangs up and refuses to answer multiple call-backs from OEMC. SUP 001527. Beginning immediately after the initial call and with one brief exception Cheris Jackson denied she was the declarant. Specifically,

1. Cheris denied she called 911 when the OEMC operator called her back after she hung up on November 8, 2012; (see Nov. 9, 2012 Stmt. SUP 000150, Ln. 16-20);
2. Cheris denied she made the 911 call the day after the occurrence during her first IPRA interview and describes the caller as an unknown black female approximately 24 years of age (SUP 000158, Ln. 26-31);

3. Cheris denied she made the 911 call during her second IPRA interview on June 30, 2015 and again says it was an unknown female she hasn't seen since (SUP 000707, Ln. 20-32); and
4. Cheris denied she made the 911 call during her third and final IPRA interview on August 22, 2016, and again says an unknown woman came up to her asking to use her phone and Cheris let her (SUP 001271, Ln. 24-32, SUP 001272, Ln. 1-7).

At the end of her third and final IPRA statement Cheris Jackson re-affirms she was not the 911 caller prompting the three (3) IPRA investigators, which included a supervisor and the Chief of IPRA, to go off the record. SUP 001302. Once back on the record, the investigators obtained Ms. Jackson's sole confirmation without asking a single question. First, the investigators complimented Cheris Jackson calling her, "extraordinarily helpful", "brave", and "super believable". SUP 001303-04. Next, the investigators told Cheris they knew it was her on the call and told her she has to explain that it was her on the call, "if that's true" to which she remains silent. (SUP 001303, Ln. 22-24; SUP 001303, Ln. 30-31; SUP 001303, Ln. 31-32; SUP 001304, Ln. 1-2). After the investigators reassure Ms. Jackson, "we're not tryin' to put words in your mouth," the investigator actually does put words in her mouth, "You've got to say yes," to which Ms. Jackson finally replies after four (4) years with a "yeah". SUP 001304, Ln. 24. The only admission to being the 911 caller over the course of a four (4) year investigation resulted from being told to say yes by a, "fact-finding investigator". Therefore, the identity of the 911 caller cannot be considered free from doubt further warranting the denial of the Superintendent's Motion in Limine.

In addition to her subsequent denial of ever making the phone call which underscores the Superintendent's argument, the factual inaccuracies of Cheris Jackson's 911 call articulate that the time for an un-reflected statement had passed and Ms. Jackson's statement was in fact a speculative recitation of past events.

The United States Constitution does not yield to the Federal Rules of Evidence and therefore hearsay exceptions do not apply to testimonial statements requiring cross-examination under the confrontation clause. A statement is testimonial if the declarant is acting in a manner analogous to a witness at trial, describing or giving information regarding events that have already occurred. *People v. Sutton*, 233 Ill. 2d 89, 111, 908 N.E.2d 50, 64 (2009) citing *People v. Stechly*, 225 Ill.2d 246, 312 Ill.Dec. 268, 870 N.E.2d 333 (2007).

A 911 call for help may constitute non-testimonial evidence if made while the declarant is under a true emergency. *Washington v. Davis*, 547 U.S. at 822, 126 S.Ct. at 2273-74, 165 L.Ed.2d at 237. However, once the threat has passed the statements are testimonial in nature and not subject to a hearsay exception. *Id.* In this case, Ms. Jackson was never under the duress of an emergency situation and her 911 call was purely a testimonial recitation of the events as she believed them to be after a period of time for reflection. The 911 call in this case is particularly the type of "weaker substitute for live testimony" statement the Supreme Court has cautioned against. *United States v. Inadi*, 475 U.S. 387, 394, 106 S.Ct. 1121, 89 L.Ed.2d 390 (1986).

The Appellate Court has held that where a statement qualifies as a hearsay exception but is testimonial in nature the constitution controls and the statement must be subject to cross-examination to satisfy the requirements of the confrontation clause. *People v. Perkins*, 2018 IL App (1st) 133981, ¶ 79. Accordingly, for the reasons stated herein, the Superintendent's Motion in Limine should be denied.

WHEREFORE, Respondent, BRANDON TERNAND, by and through his attorney, James E. Thompson, respectfully requests that this Honorable Court deny the Superintendent's Motion in Limine and bar Cheris Jackson's 911 call audio recording and transcript of the 911 call

from being admitted into evidence or presented to the Board absent proper foundation laid by the declarant.

Respectfully Submitted,

/s/ James E. Thompson
Attorney for Respondent

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POLICE BOARD
CITY OF CHICAGO

Respondent,

Case No.: 17 PB 2940

7. Unfortunately, Officer Cantore has articulated that he places himself in jeopardy with his employer if he were to testify.

8. As such, it would be a violation of the Respondent's due process rights to not be allowed a short continuance in order to secure an expert to rebut the testimony of the City of Chicago's expert.

9. The Respondent believes that on the dates of May 17 and 18 of 2018, the Hearing could proceed and all remaining witnesses could provide their testimony and that a short thirty (30) day continuance could be given to allow Officer Ternand the opportunity to disclose and present a rebuttal witness.

10. These events were unforeseen and could not have been anticipated by counsel for the Respondent.

11. This request is brought in good faith and is not brought to cause a delay in this proceeding and no party will be prejudiced by the granting of this extension.

WHEREFORE, Respondent, BRANDON TERNAND, by and through his attorney, James E. Thompson, respectfully requests that the Police Board extend the Hearing of this cause and grant the parties an additional hearing date and grant the Respondent leave to disclose a new use of force expert.

Dated: May 16, 2018

Respectfully Submitted,

/s/ James E. Thompson
Attorney for Respondent

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BEFORE THE CITY OF CHICAGO POLICE BOARD

IN THE MATTER OF CHARGES)
AGAINST:) 17 PB 2940
BRANDON TERNAND, Officer of the)
Chicago Police Department)

30 North LaSalle Street
Suite 1220
Chicago, Illinois
April 30th, 2018
12:41 p.m.

Reported by: Tabitha Watson, CSR-RPR
License No.: 084-004824



1 BOARD MEMBERS PRESENT:

2 MS. ALLISON WOOD, Hearing Officer

3 MR. JAMES P. FIEWEGER, on behalf of the
4 Superintendent

5 MS. SARA R. WHALEY, on behalf of the
6 Superintendent

7 MR. JAMES THOMPSON, on behalf of the
8 Respondent

9 MR. ROBERT ARROIL, on behalf of the
10 Respondent

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22 McCorkle Litigation Services, Inc.
Chicago, Illinois (312) 263-0052

1 HEARING OFFICER WOOD: Good afternoon. This is
2 the matter of charges against Brandon Ternand --
3 how do you say that?

4 MR. FIERWEGER: Ternand.

5 HEARING OFFICER WOOD: 17PB2940. My name is
6 Allison Wood. I'm the hearing officer on this
7 matter.

8 I'm going to ask the parties to identify
9 themselves for the record starting with the
10 Superintendent.

11 MR. FIERWEGER: James Fierweger,
12 F-I-E-R-W-E-G-E-R.

13 MS. WHALEY: Sara Whaley, W-H-A-L-E-Y.

14 MR. THOMPSON: James Thompson, T-H-O-M-P-S-O-N,
15 on behalf of Officer Brandon Ternand.

16 MR. ROYAL: Robert Arroil, A-R-R-O-I-L, on
17 behalf of Brandon Ternand.

18 HEARING OFFICER WOOD: Thank you. We conducted
19 a pretrial conference today and I want to put on
20 the record what we have all concluded.

21 The first thing is the scheduling. This
22 matter was scheduled for May 11th and May 17th I
23 believe. We're changing the dates a little bit.
24 so the first day of hearing will be May 11th at



1 10:00 a.m. and we will have to conclude at
2 4:00 p.m. on that date. The parties are made aware
3 of that and have identified the witnesses that will
4 testify on that date. The second day of hearing
5 will be May 17th with a 10:00 a.m. start and it is
6 expected that we will have expert testimony mostly
7 on that day and then we will conclude on May 18th
8 at 10:30 a.m. to conclude any additional witness
9 testimony at that time.

10 With respect to the witness list, the
11 parties are going to I guess at some point
12 determine whether or not -- I guess the
13 Superintendent is going to determine whether or not
14 they're going to bring Sharice (phonetic) Jackson.
15 It has been my advice that they probably prepare a
16 summary search of some kind if they are intending
17 to bring her without -- I'm sorry, if they are
18 intending to bring the report from the 911 call
19 without her as a witness. I'm giving them the
20 opportunity to supply some information that would
21 make that permissible.

22 So with the exhibit list I think that
23 was all we had for witnesses. So with the exhibit
24 list, I'll start with the Superintendent. Their



1 Exhibit No. 1 was no objection. 2, map of pursuit,
2 diagram of backyard. The parties have agreed that
3 they may revisit that exhibit. They may want to
4 agree on adding additional information there.

5 Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11 have all been
6 basically admitted into evidence. I did ask the
7 Superintendent to see if they could create a disc
8 or a file with respect to Exhibit No. 6, which is
9 the radio dispatches so that they would be a little
10 easier for the Police Board to access and review.

11 MR. FIERWEGER: With respect to Exhibit No. 8,
12 that's our expert report.

13 HEARING OFFICER WOOD: Okay.

14 MR. FIERWEGER: He marked it in case we need
15 it.

16 HEARING OFFICER WOOD: In case you need it.
17 Okay. So the other exhibits have been admitted 1
18 through 10 but not 8, would that be accurate?

19 MR. FIERWEGER: Yes.

20 HEARING OFFICER WOOD: Okay. I'll just stop
21 there for a second. Is there anything else on your
22 side that I need to clarify?

23 okay. From respondent's side, I don't
24 think there were any objections to any of your



1 witnesses. We would just ask that you -- and you
2 already know this, to not have any duplications, if
3 you have some duplications to your witnesses and
4 what they say. I don't think we have objections,
5 right?

6 MR. FIERWEGER: Correct.

7 HEARING OFFICER WOOD: Respondent's exhibit
8 list. What we talked about is that Group Exhibit 1
9 would be reviewed by Respondent's counsel to
10 determine if there's a way to streamline that or
11 summarize that. Exhibits 6, 7, 8, 9, 10, and 11
12 were denied. They will not be admitted into this
13 case.

14 Respondent's counsel was advised to review
15 Exhibits 13 through 17 to see if they can eliminate
16 anything that's duplicative there. Group
17 Exhibit 2A was denied. 22A, B, C, and D denied.
18 Exhibit 27 is also denied. Exhibit 38 and 39 are
19 with the caveat that they would be used for
20 impeachment purposes. Exhibit 45, 46, 47 were
21 denied. All other exhibits were admitted without
22 objection from the McCorkle Litigation Services, Inc.
Chicago, Illinois (312) 263-0052 Superintendent.

23 Is there anything from Respondent that
24 needs to be clarified?



1 MR. THOMPSON: Just in the event that -- I
2 don't have any intentions on calling Sharice
3 Jackson, but if somehow there is an opinion that
4 her statements can come in without her being
5 present, then I'm going to need to get a subpoena
6 on her for purposes of impeachment.

7 MR. FIERWEGER: We are in the process of
8 subpoenaing her. So even if we elect not to call
9 her, we should have a subpoena on her by the end of
10 the week, or early next week. If we do that, I'll
11 let you know and you don't need to subpoena her.

12 HEARING OFFICER WOOD: That's what I was going
13 to say, if you guys can talk about it.

14 Are there any other issues before we close
15 the pretrial conference?

16 MR. THOMPSON: Are we going to be able to --
17 are we going to be able to handle the technology
18 over here? Did you want to talk about this before,
19 bringing an overhead? Can we get that from the
20 City department?

21 MR. FIERWEGER: Yeah. Jim talked about perhaps
22 he wanted to play some videos.

23 MR. THOMPSON: Or even if you would use the
24 OEMC.



1 MR. FIERWEGER: Right. The law department has
2 equipment. They have a television that can be used
3 as a monitor and there's other equipment connected
4 to it. I'll arrange to have that available.

5 HEARING OFFICER WOOD: Sounds like you can work
6 that out.

7 MR. THOMPSON: Right.

8 HEARING OFFICER WOOD: Anything else?

9 Okay. If there is any problem, then you
10 should probably let us know before May 11th. We
11 have a short timeline here, but I will be expecting
12 everybody to be ready on May 11th at 10:00 a.m.

13 Thank you all.

14 (which were all the proceedings
15 had in the above-entitled
16 cause.)

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Chicago, Illinois (312) 263-0052



BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

**IN THE MATTER OF CHARGES FILED AGAINST
POLICE OFFICER BRANDON TERNAND,
STAR No. 2717, DEPARTMENT OF POLICE,
CITY OF CHICAGO,**

RESPONDENT.

No. 17 PB 2940

(CR No. 1058279)

ORDER REGARDING PRE-HEARING CONFERENCE

On April 30, 2018, the Hearing Officer conducted the pre-hearing conference in this case with counsel for both the Superintendent and the Respondent present. The following issues were discussed at this conference.

I. Revised Hearing Schedule

The hearing for this case was previously scheduled to take place on May 10, 11, and 17, 2018, at 10:00am. Counsel for the Superintendent advised that he has a conflict with May 10, 2018. It was agreed by the parties to revise the scheduling of the hearing such that it will now take place on **May 11, 2018**, at 10:00am, **May 17, 2018**, at 10:00am, and **May 18, 2018**, at 10:30am. The parties were advised that due to a scheduled Police Board Meeting on May 17, 2018, the hearing will end no later than 4:00pm on that date. The May 10, 2018 date is hereby stricken.

II. The Schedule of Witnesses

On May 11, 2018, the Superintendent intends to call Officer Brandon Ternand as an adverse witness, and Cheris Jackson, a witness who made a 911 call about the incident in question. The Superintendent also listed Valerie Howard as a witness. Ms. Howard is a Police Communications Operator and record custodian for the 911 call purported to have been made by

Ms. Jackson. The Superintendent indicated that if he calls Ms. Howard, he might not call Ms. Jackson. Objections were raised by Respondent that the Superintendent should not be allowed to present testimony by Ms. Howard as to what was said on the 911 call without the testimony of Ms. Jackson. The testimony of Ms. Howard standing alone, would lack foundation as to who is speaking on the 911 call; and her testimony would be hearsay because it is being presented for the truth of the matter asserted in the statements made on the 911 call. Further, Respondent should not be denied the opportunity to cross-examine the speaker on the 911 call if the speaker's statements are to be admitted into evidence. The Superintendent did not agree with the Respondent's objections and asserted that the audio/transcript of the 911 call falls within the business record exception of the hearsay rule. The Hearing Officer agreed with the objections made by Respondent, but reserved ruling in order to provide the Superintendent with the opportunity to submit information to address the objections. Said information should be submitted by the Superintendent at least five (5) days prior to the beginning of the hearing. If no information is provided within that time frame, or the research provided is later deemed by the Hearing Officer to be unpersuasive, the Respondent's objections will be sustained such that Ms. Howard will not be permitted to testify regarding what was said on the 911 call unless Ms. Jackson is called as a witness. The Superintendent also agreed to confirm with Respondent that a subpoena for Ms. Jackson will be issued by the Superintendent even if Ms. Jackson is not called to testify in the Superintendent's case. Finally, the parties agreed to alter the order of the presentation of witnesses by allowing Respondent to call two witnesses to testify on May 11, 2018: Officer Victor Razo and Officer Anthony Bruno. Both have some knowledge about the incident in question, and both will testify about Officer Ternand's character.

On May 17, 2018, the Superintendent will call his expert witness, the Respondent will call his expert witness, and Officer Ternand will testify on his own behalf.

On May 18, 2018, all of Respondent's remaining occurrence and mitigation witnesses will likely testify. Respondent has agreed to streamline and/or avoid any duplicative testimony.

III. The Parties' Exhibits

The Superintendent presented an Exhibit List with 11 exhibits. The Superintendent represented that although they listed their expert's report, they will not likely seek to move the report into evidence. The Superintendent and Respondent agreed to meet and discuss how Exhibit #2 (referred to as "Map of Pursuit") may be revised to provide additional information. With respect to Exhibit #6 (referred to as "Radio Dispatches") the Superintendent represented that they would find a way to create an audio file, disc, or transcript of the dispatches for easier review. Respondent did not object to any of the Exhibits presented by the Superintendent.

The Respondent presented an Exhibit List with 49 exhibits. After objections by the Superintendent, the Respondent agreed to try and find a way to streamline or summarize what is identified as Group Exhibit #1 which consists of 150 pages. The following exhibits were objected to by the Superintendent and the objections were sustained such that these exhibits will not be admitted into evidence: Exhibits # 6-11, Group Exhibits #22A - #22D, Exhibit #27, and Exhibits #45- 47. All remaining exhibits will be admitted without objection by the Superintendent. Respondent also agreed to streamline exhibits to avoid duplication such as appears to be the case with Exhibits #14-17.

Police Board Case No. 17 PB 2940
Police Officer Brandon R. Ternand
Order Regarding Pre-Hearing Conference

The parties have agreed to confer as to the use of demonstrative exhibits and the availability for any technical equipment that may be used at the hearing.

Enter:

A handwritten signature in black ink, appearing to read "Allison Wood". The signature is written in a cursive, flowing style.

ALLISON L. WOOD
Hearing Officer

Date: May 1, 2018